



How to Respond to Suspected Financial Exploitation



JASON KANDER
| SECRETARY OF STATE

About this Presentation

- This presentation was created to assist brokerage industry agents and sales assistants in identifying financial exploitation of the elderly, as well as learning key steps in the reporting process.
- Unless otherwise indicated, nothing in this presentation is meant to be construed as legal, statutorily defined language.
- Unless otherwise specifically noted, the term “financial exploitation” should be read in the broad sense to include all adults, whether or not dependent or incapacitated.
- The information provided in these materials is general information and is not intended, or to be relied upon, as legal advice. While the information pertains in part to legal issues, it is not intended as a substitute for the particularized advice of your own counsel. Anyone seeking specific legal advice or assistance should retain an attorney.

Overview

- The Missouri Senior Savings Protection Act (“SSPA”) became effective on August 28, 2015.
 - The aim of this law is to protect senior and disabled investors from financial exploitation.
 - The SSPA expands the authority of brokerage firms in an effort to prevent, detect and halt potential financial exploitation.
 - The SSPA does not currently affect investment advisers, banks, insurance companies or any other financial institutions.
- This PowerPoint provides pertinent information to brokers on how to respond to suspected financial exploitation of the elderly and disabled.

Definitions

- Terms used in this PowerPoint are defined as such:
 - Qualified Adult- a person 60 years or older, or a person between 18 and 59 years old with a disability in certain instances.
 - Qualified Individual- a person associated with a broker-dealer serving in a supervisory, compliance or legal capacity.
 - Immediate Family Member- a spouse, child, parent or sibling of the qualified adult.
 - Financial Exploitation- the wrongful or unauthorized taking, withholding, appropriation or use of money, real property or personal property of a qualified adult.

Courses of Action

- The SSPA authorizes a broker-dealer to take two types of action:
- **Disclosure**
 - Qualified brokerage personnel disclose their suspicion that a client is being exploited to the an immediate family member of the client.
- **Delay of Disbursement**
 - A qualified individual delays a disbursement for up to 10 business days.
- A broker-dealer is not mandated to take action under the SSPA.

Notice of Concern

- If a qualified individual believes financial exploitation has occurred, has been attempted or is being attempted, they may notify the Missouri Securities Division and/or the Department of Health and Senior Services (“DHSS”).
 - A qualified individual may also notify an immediate family member, a person holding legal guardianship, conservatorship, power-of-attorney and/or a co-trustee or successor trustee of the qualified adult/client.
 - The Securities Division and DHSS must be notified prior to the notification of any third party listed above.

The form to contact the Securities Division and DHSS is available as a PDF to send by mail or fax, and is also available as an online submission form.

- [Notice of Concern](#)

Refusal of Disbursement

- A qualified individual may refuse for up to ten business days a request for a disbursement from an account of a qualified adult only if they reasonably believe financial exploitation may occur as a result of that disbursement.
 - An agent cannot refuse the disbursement him/herself and receive protection under the SSPA, unless the agent also serves in legal, compliance or supervisory capacity.
- The agent should inform a qualified individual about suspicion of financial exploitation, who can then refuse the disbursement.
 - The ten-day refusal only applies to the disbursement of funds out of the client's account.

Notification of Refusal of Disbursement

- When a disbursement is refused, two separate notifications are required:
 - Within two business days, the qualified individual or brokerage firm must notify all parties authorized to transact business on the account.
 - Within three business days, the qualified individual or brokerage firm must contact DHSS and the Securities Division.
 - The form to contact DHSS and Securities Division is available as a PDF to send by mail or fax, and is also available as an online submission form.
 - [Notice of Concern](#)

Withholding Period

- Following a refusal of disbursement, the broker-dealer is authorized under the SSPA to refuse the disbursement of funds until one of the following occurs:
 - The broker-dealer reasonably believes the disbursement will not result in financial exploitation.
 - Ten business days after the initial refusal date pass.
- During this time period, the broker-dealer or qualified individual is immune from civil liability.
- A court may enter an order extending this time frame or order other protective relief.
 - A request for this is most commonly filed by the broker-dealer, a family member, DHSS or the Securities Division.

Investigation

- Once a Notice of Concern is received by the Securities Division, an investigator and attorney will conduct and complete the investigation and the Division will give a copy of the Notice of Concern to the Department of Health and Senior Services.
 - The Securities Division will work with DHSS to conduct parallel investigations.

Sources

- Information in this presentation has been taken from the *Missouri Securities Division Senior Savings Protection Action Enforcement Guide*.

